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6 **U. S. DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 KEVIN J. MIRCH, ESQ.,

Case No. 3:05-cv-00641-RLH-RAM

10 Plaintiff,

11 v.

12 BRUCE BEESLEY, ROB BARE, BRIDGET ROBB
13 PECK, DONALD CHRISTENSEN, STATE BAR OF
14 NEVADA, DOES I-X, A-Z CORPORATIONS,

15 Defendants
16

17 **Reply in Support of Motions to Dismiss Plaintiff's**
18 **First Amended Complaint**
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Reply in Support of Motions to Dismiss

Defendants, by and through their counsel of record, submit their combined Memorandum of Points and Authorities in Support of their Motions to Dismiss, filed April 19, 2006, as follows:

Memorandum Of Points And Authorities

I. Nature of the Case

A. Mirch's Opposition confirms that his only goal is to have this Court interfere with the State Bar of Nevada disciplinary proceedings.

As noted in Defendants' Motions, on November 23, 2005, Plaintiff Kevin Mirch ("Mirch") filed his complaint in this Court for the purpose of obfuscating a disciplinary proceeding pending against him before the State Bar. Mirch's First Amended Complaint remains a prime example of vexatious and inappropriate litigation, comprising sixty (60) pages and four hundred (400) paragraphs of repetitive, accusatory, defamatory, largely unintelligible allegations against a panoply of judges, mediators, attorneys and State Bar officials, all of whom are accused of conspiring against Mirch to destroy his law practice and reputation. While his Opposition attempts to focus on the alleged conspiracies, it is clear that his goal remains the same – prevention of the disciplinary action against him.

Defendants have not ignored Mirch's allegations ranging from nefarious political skullduggery, to terrorism (bombing of his office), to theft and fraud, to intent to cause Mirch mental harm. However, even if all of Mirch's allegations were to be accepted as true, they fail to

1 overcome the obvious and fatal jurisdictional deficiencies in his First Amended Complaint. And
2 even if Mirch were able to overcome the jurisdictional deficiencies, he cannot overcome the
3 other deficiencies that appear on the face of his First Amended Complaint.

4 As also noted in Defendants' Motions, the impetus for Mirch's disciplinary action stems
5 from a First Amended Complaint filed in the Second Judicial District Court, Washoe County,
6 Nevada, *styled Kevin J. Mirch, Doe Plaintiffs A-Z v. McDonald, Carano & Wilson, LLP, Leigh*
7 *Goddard, Esq., and Doe Attorneys 1-10.*, case no. CV02-05644. On October 9, 2003, District
8 Judge James Hardesty entered an Order Dismissing Mirch's lawsuit, imposing sanctions
9 pursuant to NRCPC 11, and referring the matter to the State Bar for disciplinary investigation.
10 Following additional correspondence and investigation, the State Bar filed a Formal Complaint
11 against Mirch on June 14, 2004. After extensive motion practice and continuances, most of
12 which were requested by Mirch, the matter is now scheduled for hearing beginning December 7,
13 2006. Thus, Mirch's disciplinary case is ongoing. It is this hearing which Mirch is still seeking
14 to enjoin and obstruct. His Opposition attempts to deflect the Court's attention from the real
15 allegations which, with some difficulty, may be gleaned from Mirch's First Amended Complaint.
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18 II. Statement Of Facts Alleged

19 A. Mirch does not dispute that the individual
20 defendants were named because of their purported
21 involvement in Mirch's State Bar disciplinary
22 proceedings.

23 As noted, all of the individual Defendants were named based upon conduct alleged to
24 have been undertaken under color of law, thereby purportedly establishing this Court's
25 jurisdiction under 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983. [Plaintiff's First
26 Amended Complaint ("FAC"), ¶ 15.] Mirch now claims that the "crux of the complaint ... is the
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1 ongoing conduct of the Defendants to interfere with Mr. Mirch's business of practicing law."
2 [Opp. p. 2, lns. 20-21].

3 However, Mirch does not dispute that Defendant Rob Bare was sued strictly for his
4 conduct performed in furtherance of his duties as Bar Counsel for the State Bar of Nevada.
5 [FAC, ¶¶ 37, 41, 75, 78, 194, 210 – 212]. And while Defendants Bruce Beesley and Bridget
6 Robb Peck appear to have been sued strictly for conduct arising from their interaction with the
7 disciplinary process of the State Bar, either by filing grievances with the State Bar or allegedly
8 inducing others to do so, Mirch now claims they were sued for interfering with Mirch's law
9 practice. That argument is sophistry, however. The First Amended Complaint makes clear that
10 any alleged interference resulted from alleged bar complaints, or as Mirch now phrases it, to "use
11 of the Bar as a litigation tool." [Opp. p. 4, ln. 10]. [See, specifically, FAC, ¶ 96 ("During that
12 litigation, Mr. Mirch endured nearly one dozen bar complaints either encouraged or written by
13 Mr. Beesley and Ms. Peck.")]. It is a distinction without a difference. Defendants previously
14 noted that Mirch's allegations appear to encompass an alleged conspiracy and concert of action
15 between these two Defendants and the State Bar. [FAC, ¶¶ 41, 44, 45, 46, 71, 72, 76, 78, 96,
16 155, 164, 194, and 208].

17 Mirch's Opposition also suggests that Defendant Don Christensen was properly sued on
18 the basis of a "conflict of interest." [Opp. p. 21, lns. 21-22]. Mirch's Opposition does nothing to
19 dispel the conclusion that Mirch simply failed to allege any *specific* conduct by Mr. Christensen
20 in the First Amended Complaint outside his involvement in a disciplinary proceeding.

21 Finally, if the Court were to attempt to separate Mirch's Siamese twins - alleged
22 interference with his law practice and injunction against the disciplinary proceeding – both
23 would still fail to survive the operation. The state law claims are barred by numerous
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1 deficiencies, not the least of which are statutes of limitation; and the purported federal law claims
 2 are barred, as noted in Defendants' Motions, by various other defects.

3
 4 B. Mirch's Opposition attempts to lump all Defendants
 5 together.

6 Mirch claims that his lawsuit "arises from years of disparate treatment by the
 7 Defendants" against him. [Opp. P. 2, Ins. 3, 4]. His Opposition makes no effort to address the
 8 different motions to dismiss filed by the State Bar of Nevada and by the individual defendants.
 9 The State Bar of Nevada has asserted different defenses to Mirch's First Amended Complaint
 10 than these individual defendants, although some of the defenses overlap. Accordingly,
 11 Defendants have filed a combined Reply in support of their respective Motions to Dismiss.

12 Throughout the general allegations of his First Amended Complaint, Mirch alleges a
 13 conspiracy by Defendants to use the discipline process of the State Bar against him. [See, FAC
 14 ¶¶ 25, 37, 39, 41, 60, 155, 194, 259]. Thus, the nucleus of Defendants' alleged improper conduct
 15 arises from their participation in the discipline process. Mirch still fails to allege, in any
 16 cognizable or coherent manner, that these Defendants are using *any other means* to harm Mirch.
 17 Mirch does not dispute that neither the Nevada Supreme Court nor any of the Defendants have
 18 ever deprived Mirch of his license to practice law.¹

19
 20 Mirch's allegations establish that the entire thrust of his First Amended Complaint is
 21 directed toward the State Bar of Nevada disciplinary system and various actors within it, be they
 22 Bar Counsel, Hearing Panel member, or grievant. And, as set forth in the Motions to Dismiss, all
 23 five Claims for Relief, being predicated upon this common nucleus of operative facts and
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 26 ¹ The Court may certainly note that Mr. Mirch is facing a criminal proceeding involving charges of insurance
 27 fraud, theft and suborning perjury, conviction on any of which may or may not result in disbarment. *See, In*
 28 *re Monteiro*, 100 Nev. 440, 684 P.2d 506 (1984).

1 conduct, should be dismissed for lack of subject-matter jurisdiction and for failure to state a
2 claim.

3 III. Standard of Review

4 Mirch does not disagree with Defendants' recited standard of review. He does, however,
5 fail to note that the Court is not "required to accept as true allegations that are merely conclusory,
6 unwarranted deductions of fact, or unreasonable inferences." *Manufactured Home Com. V. City*
7 *Of San Jose*, 420 F.3d 1022 (9th Cir. 2005); *citing*, *Sprewell v. Golden State Warriors*, 266 F.3d
8 979, 988 (9th Cir. 2001) (reviewing motion to dismiss for failure to state a claim under Rule
9 12(b)(6)).
10

11 IV. Argument

12 A. Mirch's "qualified immunity" argument does
13 nothing to bolster his defenses against dismissal;
14 Defendants enjoy an absolute quasi-judicial
15 immunity.

16 Mirch argues that the individual Defendants' conduct alleged in the First Amended
17 Complaint is subject only to a "qualified immunity," because the conduct has gone "outside the
18 scope of immunity." [Opp. p. 5, lns. 15-18]. Mirch apparently agrees that if Defendants had not
19 acted outside the scope of immunity, an absolute judicial immunity would apply. Mirch asserts
20 the bare conclusion that "it is undisputed that Beesley, Peck Et. Al. were using the bar as an
21 advertising and litigation tool by telling clients they had the power to affect attorneys' licenses
22 and therefore the underlying cases." [Opp. p. 5, lns. 12-15]. The focus of the allegation remains
23 "using the bar," i.e., initiating, investigating and/or prosecuting disciplinary actions against
24 Mirch. Accordingly, Mirch has failed to allege any conduct outside the scope of immunity, as he
25 alleges.
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1 Cases in which absolute judicial immunity applies to actors in state bar disciplinary
2 proceedings abound. In *Louis v. Supreme Court of Nevada*, 490 F. Supp. 1174 (D.Nev. 1980),
3 this Court dismissed plaintiff's 42 U.S.C. §1983 claims against the State Bar of Nevada because
4 it was "under the exclusive jurisdiction and control of the Nevada Supreme Court," and as "an
5 integral part of the judicial process ... entitled to immunity from suit under the Civil Rights Act."
6 *Id.* at 1180, citing, *Clark v. State of Washington*, 366 F.2d 678, 681 (9th Cir. 1966) (§1983 claim
7 against State Bar dismissed on ground state was not a "person" under §1983, state bar acted in
8 quasi-judicial capacity and had judicial immunity from suit under Civil Rights Act, and no
9 federal court except the U.S. Supreme Court may set aside a judgment of a state court). *See also*,
10 *Kissell v. Breskow*, 579 F. 2d 425 (7th Cir. 1978) (executive secretary of state bar had quasi-
11 judicial immunity against suit arising out of disciplinary action); *Lebbos v. State Bar*, 165
12 Cal.App.3d 656 , 211 Cal.Rptr. 847 (1985) (state bar and its officers held quasi-judicial
13 immunity from suit under §1983); *Ginger v. Circuit Court for County of Wayne*, 372 F.2d 621
14 (6th Cir. 1967).

17 Mirch argues that *Botello v. Gammick*, 413 F.3d 971 (9th Cir. 2005) requires a different
18 result. Mirch is in error. In *Botello*, the Court noted that "[p]rosecutors are absolutely immune
19 from liability under §1983 for their conduct insofar as it is 'intimately associated' with the
20 judicial phase of the criminal process." *Id.* at 975. *Botello* did not involve any claim of quasi-
21 judicial immunity by actors in a state bar disciplinary proceeding, and *Botello* did not purport to
22 overrule *Clark*. Accordingly, to the extent the actions of all the Defendants in this case were
23 intimately associated with the initiation, investigation and/or prosecution of a State Bar
24 disciplinary proceeding, Defendants are immune from suit as a matter of law.
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1 Mirch's First Amended Complaint alleges only "use of the bar as a litigation tool" against
2 the individual defendants. That is a "mere general allegation which [does] not reveal detailed
3 and precise facts...." *Kissell v. Breskow, supra*, at 428. A claim under §1983 requires "[m]uch
4 more than vague and conclusory allegations A plaintiff must allege with particularity facts in
5 the form of specific overt acts." *Lebbos, supra*, at 664, *citing, Taylor v. Mitzel*, 82 Cal.App.3d.
6 665, 674, 147 Cal.Rptr. 323 (1978). Mirch's only attempt to allege specific overt acts fails
7 entirely. *See.*, FAC ¶¶44-46 (containing only conclusory allegations and hearsay from fifteen
8 years ago); ¶72 (containing only conclusory allegations and inadmissible hearsay, but no specific
9 facts); ¶¶261-262 (virtually unintelligible, but alleges only general "use of the State Bar of
10 Nevada as a business tool).
11

12 Thus, Mirch's First Amended Complaint fails to allege any facts sufficient for a finding
13 that Defendants were acting outside the scope of their quasi-judicial immunity. In fact, his
14 allegations establish that Defendants' conduct was intimately connected with their quasi-judicial
15 activities for the State Bar. The Court should dismiss Mirch's complaint on the grounds of
16 quasi-judicial immunity.
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18 B. Mirch's First Amended Complaint fails to allege the
19 elements of his §1983 claim with sufficient
20 particularity.

21 Mirch follows the example of the attorney in *Lebbos*, who also failed to allege the
22 elements of her purported §1983 claim with any sufficient particularity. Ms. Lebbos alleged, as
23 does Mirch, that the defendants, "acting individually or in concert, deprived her of rights
24 guaranteed her under the federal and state Constitutions, including equal protection, due process,
25 freedom of speech [etc.]" *Id.* at 663. The *Lebbos* court noted that §1983 claims must contain
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1 two elements: depriving plaintiff of a right secured by the constitution, and acting under color of
2 state law at the time the conduct complained of occurred. *Id.*

3 Mirch's Opposition appears to argue both that the individual Defendants were **not** acting
4 under color of state law, because their acts were purportedly outside the scope of their immunity,
5 and that they **were** acting under color of state law, as participants in the State Bar grievance
6 process. Mirch cannot have it both ways. If Defendants were acting under color of state law,
7 then their acts as members of the Northern Nevada Disciplinary Panel, or as the State Bar, were
8 absolutely immune; and if they were not, then Mirch has failed to state a claim under §1983. In
9 any event, as noted above, Mirch has also failed to allege any specific overt acts sufficient to
10 state a claim of acting under color of state law. *See, Lebbos, supra*, at 664. "A private entity or
11 individual does not conspire with a state official merely by asking a state official to take some
12 action." *Id.*, citing, *Tarkowski v. Robert Bartlett Realty Co.*, 644 F.2d 1204, 1208 (7th Cir. 1980).
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15 C. Mirch's Eleventh Amendment arguments are
16 incorrect.

17 Mirch argues that because the State Bar, under SCR 76, can "sue and be sued," it must
18 therefore have waived its Eleventh Amendment immunity. The argument does not withstand
19 scrutiny. Numerous cases hold that a "sue and be sued" clause in an enabling statute constitutes
20 a waiver of sovereign immunity, [*see, e.g., Marceau v. Blackfeet Housing Authority*, 455 F.3d
21 974 (9th Cir. 2006)], but the Court will look in vain for any case that suggests that a state's
22 waiver of sovereign immunity **also** constitutes a waiver of Eleventh Amendment immunity. *See,*
23 *e.g., Ginter v. State Bar of Nevada*, 625 F.2d 829 (9th Cir. 1980)(State Bar of Nevada immune
24 from suit under Eleventh Amendment). Clearly the "sue and be sued" clause did not prevent the
25 application of the Eleventh Amendment in *Ginter*. The waiver of sovereign immunity means the
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1 State Bar could be sued, in an appropriate case, in state court, not in any federal court. Mirch is
2 simply wrong.

3 In *Crosetto v. State Bar of Wisconsin*, 12 F.3d 1396 (7th Cir. 1993), the Court remanded
4 the case for a determination as to whether the State Bar had sufficient “state characteristics” to
5 qualify for immunity, and directed that if the lower court found that a suit against the state bar
6 was a suit against the state, all of plaintiff’s claims must be dismissed under the immunity
7 analysis. *Id.* at 1402. Here, there is no question that the State Bar, as the investigative arm of the
8 Supreme Court of Nevada, *is* the State. *Goldberg v. Eighth Judicial Dist. Court*, 572 P.2d 521,
9 522, 93 Nev. 614, 615 (1977) (“[I]t is clear that the judiciary, as a coequal branch of government,
10 has inherent powers to administer its affairs.”). Thus, the State Bar is immune from suit in this
11 case.
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14 Mirch also asserts that the Eleventh Amendment does not apply to Defendants Beesley,
15 Peck and Christensen. In support of that argument, Mirch reiterates certain paragraphs in his
16 First Amended Complaint [¶¶ 44-46, 72, 74, and 261-262] [Opp. pp. 10, 11]. However, Mirch
17 admits that these Defendants were “acting under color of the state....” [Opp. p. 9, ln. 21]. His
18 conclusory allegations do nothing to overcome the fact that these Defendants were acting in their
19 capacity as members of the Northern Nevada Disciplinary Panel, as Mirch clearly alleges
20 elsewhere. And even if Eleventh Amendment immunity did not apply to Beesley, Peck and
21 Christensen, Mirch failed to state any claim against them under either federal or state law. [See,
22 Motion to Dismiss].
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24 D. Mirch’s *Younger* Abstention analysis is flawed.

25 Mirch asserts that *Younger* abstention [*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27
26 L.Ed.2d 669 (1971)] “does not preclude this civil action.” [Opp. p. 12, ln. 4]. Mirch ignores
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1 settled law on this issue. In *Canatella v. California*, 404 F.3d 1106 (9th Cir. 2005), the California
2 State Bar issued a notice of disciplinary charges against one Mr. Bendel. Bendel then filed a
3 motion to intervene in Mr. Canatella's case seeking an injunction against the State Bar. The
4 *Canatella* court found that *Younger* abstention did not apply to Mr. Canatella, because the
5 disciplinary proceeding against Mr. Canatella was "no longer ongoing." The court denied
6 Bendel's motion to intervene, however, under *Younger*, because Bendel's disciplinary action was
7 still pending, and the *Younger* factors set forth in *Middlesex County Ethics Committee v. Garden*
8 *State Bar Ass'n.*, 102 S.Ct. 2515, 457 U.S. 423, 73 L.Ed.2d 116 (1982) applied.

10 Those factors, as noted in Defendants' Motions, are: (1) ongoing state proceedings; (2)
11 implication of important state interests; and (3) an adequate opportunity to litigate federal claims.
12 *Canatella, supra*, at 1109, 1110. Mirch's state proceedings are still ongoing. The *Canatella*
13 Court noted that "California's attorney disciplinary proceedings implicate important state
14 interests." *Id.* at 1110. There is no reason to suppose Nevada would take a different approach.
15 And finally, the *Canatella* Court held that the attorney disciplinary proceedings provide an
16 adequate opportunity to litigate the federal claims. *Id.* at 1111.

18 Mirch misstates the law when he asserts that "the *Younger* abstention doctrine does not
19 apply to preclude federal jurisdiction when the claims alleged in the federal suit would not be
20 fully adjudicated in the State Bar disciplinary process." [Opp. p. 12, lns. 9-11]. This misstates
21 the third *Middlesex* factor, i.e. that the state proceedings provide "an adequate opportunity to
22 litigate federal claims." It does not require that all claims asserted in the federal litigation be
23 fully adjudicated, only that there be an adequate opportunity to litigate them. And as in
24 *Canatella*, Mirch would have an adequate opportunity to litigate his federal claims in the
25 disciplinary proceeding.
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1 Mirch's analysis of *Foley v. Alabama State Bar*, 648 F.2d 355 (5th Cir. 1981) is similarly
2 flawed. Defendants cited *Foley* for the proposition (which Mirch fails to refute) that the
3 Sherman and Clayton Acts did not apply to State Bar disciplinary action. The *Foley* Court
4 declined to apply *Younger* abstention on the ground there was "no indication that appellants may
5 vindicate their constitutional rights in the state bar disciplinary proceedings...." *Id.* at 360.
6 *Canatella, supra*, indicates a contrary holding in the Ninth Circuit.
7

8 E. The Sherman and Clayton Acts do not apply to
9 State Bar action.

10 Mirch ignores the holding in *Foley, supra*, which makes it clear that neither the Sherman
11 Act nor the Clayton Act apply to actors in the State Bar disciplinary process. Instead, he claims
12 that the individual defendants are not shielded by the *Parker v. Brown*, 317 U.S. 341, 63 S.Ct.
13 307, 87 L.Ed. 315 (1943) immunity. Mirch ignores his own factual allegations which
14 demonstrate that all of the individual Defendants' actions were undertaken as either grievants or
15 as members of the Northern Nevada Disciplinary Panel.
16

17 As noted in Defendants' Motions, Mirch's First Claim for Relief alleges that the
18 individual Defendants acted in conspiracy and concert to violate the antitrust laws set forth in the
19 Sherman and Clayton Acts (15 U.S.C §§ 1, 2, 15, and 26). [FAC, ¶¶ 260 – 290]. This alleged
20 conspiracy directly involves use of the State Bar and the disciplinary process. [See, e.g., . FAC,
21 ¶¶ 266. 269, and 275].
22

23 First, Mirch asserts that Defendants acted under color of state law, and then that their acts
24 "went outside the scope of the disciplinary process." [Opp. p. 14, Ins. 4, 5]. Again, he cannot
25 have it both ways; but the allegations noted above establish that his alleged conspiracy hinges on
26 use of the State Bar and the disciplinary process. The State Bar of Nevada, and its officers and
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1 agents acting within the course and scope of their duties, are exempt from the Sherman and
2 Clayton Acts. All of the alleged violative conduct arose from each of the Defendant's
3 performance of duties in the discipline process. SCR 106 (1) provides,

4 All participants in the discipline process, including grievants, bar counsel staff,
5 members of disciplinary panels, the LOMAP director and staff, diversion monitors and
6 staff, and witnesses, shall be absolutely immune from civil liability. No action may be
7 predicated upon the filing of a disciplinary complaint or grievance or any action taken
in connection with such a filing by any of the participants

8 The Nevada Supreme Court has extended judicial immunity to all participants in the
9 discipline process, including all the Defendants here. All are acting within the scope of the
10 judicial immunity. No civil liability attaches for any conduct, and the immunity is absolute,
11 regardless of motive or intent. Mirch's allegation that Defendants have used the State Bar
12 disciplinary process "as a litigation tool" [Opp. p. 15, ln.1] is a mere conclusory allegation that
13 cannot be viewed as a fact. And the Court need not consider such conclusory allegations in
14 deciding a motion to dismiss. *See, Manufactured Home Com. V. City Of San Jose*, 420 F.3d
15 1022 (9th Cir. 2005).

17 Mirch claims to have adequately pleaded the elements of his antitrust claims, but a
18 review of his allegations demonstrates the contrary. In FAC ¶260, Mirch incorporates all
19 "claims of this complaint...." Mirch then highlights certain phrases in his First Amended
20 Complaint in an effort to show proper pleading. However, every phrase highlighted is another
21 mere conclusion. When one searches for facts, all that appears is flummery, such as "use the
22 State Bar of Nevada as Business Tool to cause harm to Mr. Mirch's business; and cause a
23 boycott of Mr. Mirch's business by terminating repeatedly causing false claims to be filed with
24 the State Bar" [Opp. p. 15, lns. 23-24; FAC ¶261]. He then highlights "directly affects
25 interstate commerce;" "the anti-competitive" and "The effect of the conspiracy is a diminution
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1 in the field of law, gaming regulation and law.” [Opp. p. 16, lns. 2, 5, 7]. He goes on for two
 2 more pages, purportedly emphasizing the words in his First Amended Complaint that establish
 3 an antitrust claim – but the words have no meaning. Every highlighted phrase is a conclusion,
 4 not a fact. And the words between the highlighted sections are no better.

5
 6 Mirch agrees that he must have alleged “(1) concerted action; (2) by two or more
 7 persons; (3) that unreasonably restrains interstate or foreign trade or commerce.” [Opp. p. 15,
 8 lns. 8, 9]. The only “concerted action” alleged as a fact in the First Amended Complaint is a
 9 curious and ultimately unintelligible phrase in ¶262: “The Defendants have *agreed* to prevent
 10 the disciplinary process to be used as a business or fraudulent tool to cause “non-compliant”
 11 attorneys that participate in illegal or improper conduct which directly affects interstate
 12 commerce.” ... [Opp. p. 15, ln.27; p. 16, lns. 1, 2 (emphasis added)]. Nowhere does Mirch
 13 allege any facts that say what the “concerted action” or “agreement” was. He refers to “illegal
 14 agreements” “established under §1 of the Sherman Act,” [FAC ¶273], but does not describe any
 15 acts undertaken as a result of such agreements, or with whom such agreements existed. In short,
 16 even if Mirch’s antitrust claims were not barred by immunity, he has failed to state any such
 17 claims with the requisite particularity. *See, e.g., Wasco Products v. Southwall Technologies*, 435
 18 F.3d 989 (9th Cir. 2006) (elements of civil conspiracy extended to antitrust conspiracies).
 19
 20

21 F. Defendant Don Christensen is entitled to be
 22 dismissed from this action.

23 Mirch agrees that the only operative facts alleged against Defendant Don Christensen are
 24 that he purportedly participated in Mirch’s disciplinary case when he had a conflict of interest,
 25 and was therefore biased. [Opp. p. 21, lns. 11-19; FAC, ¶¶ 299(g) – (j)]. Again, Mirch fails to
 26 point out to the Court how, when or where Mr. Christensen was involved in Mirch’s disciplinary
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 28

1 case. Nevertheless, he continues to allege he was deprived of his due process rights presumably
2 because he was not afforded an impartial tribunal at some point in the disciplinary proceedings.
3 However, Mirch ignores the law as noted in Defendants' Motion. *See, e.g., Stivers v. Pierce*, 71
4 F.3d 732, 741 (9th Cir.1995); *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1975).
5 Respondent bears the burden of establishing sufficient facts warranting disqualification. *Kirksey*
6 *v. State of Nevada*, 112 Nev. 980, 1006, 923 P.2d 1102, 1118 (1997). *See, also, Hirsh v. Justices*
7 *of Supreme Court of State of California*, 67 F.3d 708, 713 (9th Cir. 1995).
8

9 Mirch cannot dispute that he has not alleged that Mr. Christensen has an actual bias, or a
10 pecuniary or personal interest in the outcome of Mirch's disciplinary matter. Mirch has simply
11 failed to allege sufficient facts against Mr. Christensen even to create some appearance of
12 impropriety, much less a conflict of interest that rises to a constitutional infirmity. Accordingly,
13 the Court should dismiss Mirch's claims against this particular Defendant as well.
14

15 G. To the extent the Court considers Mirch's
16 supplemental state law claims, it should dismiss them
17 for failure to state a claim.

18 Although not argued directly in the Motions to Dismiss, Defendants assert that even if the
19 Court were to consider any of Mirch's purported state law claims, they should be dismissed for
20 failure to state a claim. Mirch's Third Claim for Relief purports to be a claim for breach of the
21 covenant of good faith and fair dealing - but Mirch fails to allege the existence of any valid
22 agreement to which he is a party. *See, Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995). He
23 then alleges that Mr. Laxalt, a non-party, made a "false statement" in 1995. Even if that could be
24 construed to state a claim against any of these Defendants, the limitation period on intentional
25 misrepresentation is three years, not ten. NRS 11.190(3).
26
27
28

1 Mirch's Fourth Claim for Relief, "Tortuous Interference With Business" even if it can be
2 read to mean either intentional interference with contractual relations or intentional interference
3 with prospective economic advantage, fails to allege the necessary elements of either claim. The
4 first requires alleging that a contract existed, which Mirch fails to do; and the second requires an
5 allegation of a prospective contractual relationship between Mirch and a third party, and
6 Defendants' knowledge of such contract, which Mirch also fails to allege. Instead, he alleges that
7 a non-defendant, Judge Munnell, knew of such "contracts." [FAC ¶368]. *See, e.g., Hilton Hotels*
8 *v. Butch Lewis Productions, Inc.* 109 Nev. 1043, 862 P.2d 1207 (1993); *Consolidated*
9 *Generator-Nevada Inc. v. Cummins Engine Co. Inc.*, 114 Nev. 1304, 971 P.2d 1215 (1998).

11 Additionally, because Mirch's Third and Fourth Claims purportedly sound in tort, the
12 limitations period is two years. NRS 11.190(4). Mirch's alleged facts in the First Amended
13 Complaint refer to events which occurred in 1985 [FAC ¶ 261]; 1991 [FAC ¶ 44]; 1995 [FAC ¶¶
14 50, 353]; 1998 [FAC ¶76, 108]; and, curiously, 2007 [FAC ¶75]. Accordingly, his state law
15 claims may also be dismissed on those grounds as well.

17 V. Conclusion

18 Mirch's Opposition does not cure the significant defects in his First Amended
19 Complaint. The focus of the Complaint is still the State Bar Disciplinary proceedings and all the
20 Defendants' involvement in them. While Mirch attempts to deflect the Court's attention away
21 from Defendants' quasi-judicial immunity and Eleventh Amendment immunity, he fails to do so.
22 In addition, Mirch simply fails to state any claims cognizable in this Court as a matter of law.

24 Accordingly, even if the largely unintelligible and scandalous allegations in the First
25 Amended Complaint are assumed to be true, Mirch can prove no set of facts that would entitle
26 him to relief on any of his claims. His claims are barred by well-established Federal law and
27

1 precedent, including the Eleventh Amendment. Accordingly, Defendants request relief as set
2 forth in their Motions to Dismiss, and for such other and further relief as the Court deems
3 appropriate in the circumstances.
4

5 Dated this ____ day of October, 2006.
6

7 PISCEVICH & FENNER

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

**REPLY IN SUPPORT OF MOTIONS TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Person(s) Served:

Kevin J. Mirch
329 Flint Street
Reno, NV 89501

_____	Hand Deliver
<u>XX</u>	U.S. Mail
_____	Overnight Mail
_____	Facsimile
	[number]

DATED this _____ day of October, 2006.

TERESA BORJON